

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a)

FACTUAL HISTORY

On September 17, 1996 appellant, then a 43-year-old machine operator, filed a timely occupational disease claim (Form CA-2) alleging that he developed chronic shoulder tendinitis, Achilles tendinitis, rupture of the labrum ischial tuberosity, and hip tendinitis of the sides and buttocks due to factors of his federal employment, including bending and stooping.³ He noted that he first became aware of his condition on March 24, 1995 and realized its relation to his federal employment on September 17, 1996. By decision dated November 9, 2001, OWCP accepted appellant's claim for left foot Achilles bursitis/tendinitis, left hip enthesopathy/trochanteric tendinitis, left plantar fascial fibromatosis, and right shoulder adhesive capsulitis/tendinitis. It paid him intermittent wage-loss compensation on the supplemental rolls from October 5, 1995 to June 14, 2002.

On October 23, 2018 appellant filed a notice of recurrence (Form CA-2a), claiming disability beginning August 21, 2018. He indicated that, following the original injury, he was on limited light-duty work. Appellant related that his right shoulder tendinitis had caused continual pain and he had undergone a total right shoulder replacement in February 2017.

In a letter dated November 15, 2018, OWCP noted that appellant appeared to be claiming disability due to a material worsening of his condition. It advised that his claim had been accepted for left leg Achilles tendinitis, right shoulder tendinitis, left plantar fasciitis, and left hip trochanteric bursitis. OWCP noted that a review of the record revealed that appellant had returned to full-duty work on June 28, 2002. It provided a definition of a recurrence of disability and advised appellant of the type of evidence required to support his claim. OWCP afforded him 30 days to provide the requested information. No response was received.

By decision dated December 18, 2018, OWCP denied appellant's claim for recurrence of disability.

On July 24, 2019 appellant requested reconsideration. He provided a narrative summary regarding his right shoulder complaints and medical treatment history. In support of his request, appellant submitted medical evidence.

³ OWCP assigned this claim OWCP File No. xxxxxx127. Appellant has a prior traumatic injury claim (Form CA1), filed on September 14, 1994, alleging that he fractured his right toes when a plastic tray fell on his right foot. OWCP assigned that claim OWCP File No. xxxxxx258. On April 8, 2001 appellant filed a Form CA-2, assigned OWCP File No. xxxxxx148, alleging that he developed acute inflammation and bilateral repetitive stress syndrome in his feet due to poor gait. That claim was denied by decision dated August 8 2001. On June 17, 2005 appellant filed Form CA-1 alleging that on June 13, 2005 he sustained a right foot fracture and avascular necrosis due to pushing a cart. OWCP accepted that claim, assigned OWCP File No. xxxxxx298, for right foot sesamoid bone fracture. On August 26, 2005 OWCP administratively combined OWCP File Nos. xxxxxx258, xxxxxx148, xxxxxx298, and xxxxxx127, with the latter serving as the master file.

In reports dated December 1, 2000 and October 6, 2003, Dr. William N. Pachas, a Board-certified internist, detailed appellant's history of injury, reviewed diagnostic testing, and provided examination findings. In his December 1, 2000 report, he attributed appellant's musculoskeletal pains to appellant's employment. Dr. Pachas, in his October 6, 2003 report, similarly detailed examination findings, diagnosed bilateral Achilles tendon tendinitis, trochanteric bursitis, right shoulder rotator cuff tendinitis, and bilateral hip bursitis.

In progress notes dated March 14, 2013, Dr. William N. Boyd, a Board-certified internist, provided physical examination findings and diagnosed right shoulder pain. He noted that appellant had a history of bilateral shoulder and leg musculoskeletal overuse problems.

In reports dated March 27 and April 10, 2013, Dr. Todd O'Brien, a Board-certified orthopedic surgeon, provided physical examination findings and diagnosed right shoulder osteoarthritis.

In progress notes dated July 13, 2016, Kyle Wayne Dore, a certified physician assistant, noted appellant's history of injury, provided examination findings, reviewed diagnostic tests, and diagnosed right shoulder osteoarthritis.

An operative report dated February 16, 2017 indicated that Dr. Mark D. Price, a Board-certified orthopedic surgeon, performed appellant's right shoulder total shoulder arthroplasty and right shoulder biceps tendon tenodesis surgery. Diagnoses included right shoulder osteoarthritis and right shoulder biceps tendon disease.

A November 9, 2017 hospital report indicated that Dr. Price performed right shoulder lysis of adhesions with manipulation and right shoulder extensive debridement that day. Dr. Price advised that his pre- and postoperative diagnoses were right shoulder adhesive capsulitis after total shoulder arthroplasty and right shoulder synovitis and bursitis.

Appellant also submitted right shoulder x-ray interpretations dated July 13, 2016, February 28, October 18, and June 13, 2017, and August 23, 2018 right shoulder computerized tomography (CT) scans, and June 13, 2017 and August 21, 2018 right shoulder arthrograms. Diagnoses included right glenohumeral severe osteoarthritis, mild right acromioclavicular osteoarthritis, status post right shoulder arthroplasty.

By decision dated October 16, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation, at any time, on his or her own motion or on application.⁴

⁴ 5 U.S.C. § 8128(a); *see F.H.*, Docket No. 20-0309 (issued January 26, 2021); *T.K.*, Docket No. 19-1700 (issued April 30, 2020); *W.C.*, 59 ECAB 372 (2008).

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

Appellant's July 24, 2019 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. While he provided a narrative summary regarding his right shoulder condition and history of medical treatment, the Board has held that his own factual interpretation does not constitute relevant medical evidence as lay persons are not competent to render a medical opinion.⁹ Additionally, the Board finds that appellant did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁰

In support of his reconsideration request, appellant submitted numerous progress reports, diagnostic tests, and surgical reports. These documents, however, either do not address the specific period of disability claimed, predate the claimed period of disability. The Board finds that the evidence submitted is, therefore, irrelevant to the underlying issue of whether appellant was disabled from work commencing August 21, 2018 due to his accepted conditions. The Board has held that the submission of evidence that does not address the particular issue involved does not

⁵ 20 C.F.R. § 10.606(b)(3); *see C.C.*, Docket No. 19-1622 (issued May 28, 2020); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the originally contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁷ *Id.* at § 10.608(a); *see F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

⁸ *Id.* at § 10.608(b); *see C.C.*, *supra* note 5; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *J.G.*, Docket No. 16-1533 (issued March 15, 2018); *see B.R.*, Docket No. 17-1661 (issued January 4, 2018); *James A. Long*, 40 ECAB 538 (1989).

¹⁰ *D.B.*, Docket No. 19-1963 (issued July 1, 2020); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

constitute a basis for reopening a case.¹¹ As such, appellant is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).¹²

The Board accordingly finds that appellant has not met any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹³

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT October 16, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹¹ See *F.H.*, Docket 20-0309 (issued January 26, 2021); *T.T.*, Docket No. 19-0319 (issued October 26, 2020); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹² *Supra* note 6 at § 10.606(b)(3).

¹³ *V.D.*, Docket No. 20-0569 (issued December 7, 2020); *C.C.*, Docket No. 18-0316 (issued March 14, 2019); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).